

Order

Michigan Supreme Court
Lansing, Michigan

November 7, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2005-22

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of
Rule 3.972 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 3.972 of the Michigan Court Rules is adopted, effective January 1, 2007.

[Additions are indicated in the text that follows by
underlining and deletions by strikeouts.]

Rule 3.972 Trial

(A)-(B)[Unchanged.]

(C) Evidentiary Matters.

- (1) Evidence; Standard of Proof. Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial, notwithstanding that the petition contains a request to terminate parental rights.
- (2) Child's statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(20) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(e), (f), (r), or (s), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement ~~the person to whom the statement is made~~ as provided in this subrule.

- (a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.
- (b) If the child has testified, a statement denying such conduct may be used for impeachment purposes as permitted by the rules of evidence.
- (c) If the child has not testified, a statement denying such conduct may be admitted to impeach a statement admitted under subrule (2)(a) if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.

(D)-(E)[Unchanged.]

Staff Comment: This amendment of MCR 3.972(C)(2) allows testimony of the child to be admitted in a child protective proceeding trial if the statement is offered by a person who heard the child make the statement.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 7, 2006

Corbin R. Davis
Clerk